

REMARKS

Claims 1 and 9 have been amended. Claims 1-11 remain pending in the application. Reexamination and reconsideration are respectfully requested.

Applicants' counsel wishes to thank Examiner Kramer for the courtesies extended during the personal interview on January 6, 2005. The following records the substance of the interview.

As agreed during the interview, Applicants have clarified independent claims 1 and 9 to point out that the "retarding brake" is an additional, active brake, such as a known retarder. Such an active brake is controlled by the electronic braking system in conjunction with the friction brake in order to perform active braking.

By contrast, in the Office Action, claims 1 and 9 were rejected as being anticipated by SETO (US 2002/152015 A1) under 35 U.S.C. §102(b). Initially, Applicants point out this bases for rejection – 35 U.S.C. §102(b) – is improper. SETO has a publication date of October 17, 2002, which is not more than one year before Applicants' July 31, 2003 filing date.

Additionally, as discussed during the interview, SETO does not disclose the use of a retarding brake, but merely utilizes a passive engine torque control for decelerating under non-urgent circumstances, such as when there is no preceding vehicle (¶31). Indeed, SETO's use of engine torque control is essentially disclosed as background material in Applicants' specification as being part of a known ACC system wherein the drive engine reduces engine torque (see ¶14, lines 8-15).


In view of the above, Applicants submit independent claims 1 and 9 are patentable over SETO. Further, claims 2-8, 10 and 11 depend from these claims, respectively, and are also submitted to be patentable.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #037068.52641US).

Respectfully submitted,

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